



March 30, 2007

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## ENGROSSED SENATE BILL No. 346

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DIGEST OF SB 346 (Updated March 27, 2007 12:33 pm - DI 107)

**Citations Affected:** IC 7.1-3; IC 36-3; IC 36-4; IC 36-7.

**Synopsis:** Marion County superior courts. Removes the requirement that certain judicial decisions made by the superior court of Marion County be made en banc or by a majority of the judges. Provides procedures for the superior court of Marion County to hear and determine certain matters.

**Effective:** July 1, 2007.

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**Bray, Lubbers, Breaux**  
(HOUSE SPONSORS — PORTER, ELROD)

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January 11, 2007, read first time and referred to Committee on Judiciary.  
January 25, 2007, reported favorably — Do Pass.  
January 29, 2007, read second time, ordered engrossed. Engrossed.  
January 30, 2007, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2007, read first time and referred to Committee on Judiciary.  
March 29, 2007, amended, reported — Do Pass.

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March 30, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 346

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 7.1-3-23-31 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 31. ~~Appeal by~~  
3 ~~Applicant for Wholesalers' Permit.~~ An applicant aggrieved by the  
4 action of the commission in denying, failing to renew, or revoking, a  
5 wholesaler's permit of any type, contrary to the provisions of ~~IC 1971~~  
6 ~~7.1-3-23-30~~, **IC 7.1-3-23-30**, shall have the right to secure a review of  
7 that determination by petition to the superior court of Marion County  
8 under the same conditions and in the same manner and mode of  
9 procedure as provided in this chapter for other appeals. The ~~judges of~~  
10 ~~the superior court of Marion County, or a majority of them sitting in the~~  
11 ~~action for review~~ shall, from the evidence presented, determine if the  
12 applicant has been denied a permit or renewal, or has had his permit  
13 revoked, on arbitrary, capricious, or political grounds and if ~~they so~~  
14 ~~determine the court determines that the permit or renewal was~~  
15 **improperly denied or revoked, the court** shall issue a writ of  
16 mandate ordering the commission to issue, renew, or reinstate the  
17 permit. However, either party shall have the right of appeal from the

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judgment of the superior court of Marion County as an appeal is taken in a civil action.

SECTION 2. IC 36-3-4-3, AS AMENDED BY P.L.230-2005, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The city-county legislative body shall, by ordinance, divide the whole county into twenty-five (25) districts that:

- (1) are compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) contain, as nearly as is possible, equal population; and
- (3) do not cross precinct boundary lines.

This division shall be made during the second year after a year in which a federal decennial census is conducted and may also be made at any other time, subject to IC 3-11-1.5-32.

(b) The legislative body is composed of twenty-five (25) members elected from the districts established under subsection (a) and four (4) members elected from an at-large district containing the whole county.

(c) Each voter of the county may vote for four (4) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The four (4) at-large candidates receiving the most votes from the whole county and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(d) If the legislative body fails to make the division before the date prescribed by subsection (a) or the division is alleged to violate subsection (a) or other law, a taxpayer or registered voter of the county may petition the superior court of the county to hear and determine the matter. **The court shall hear and determine the matter as a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings.** There may not be a change of venue from the court or from the county. The court ~~sitting en banc~~ may appoint a master to assist in its determination and may draw proper district boundaries if necessary. An appeal from the court's judgment must be taken within thirty (30) days, directly to the supreme court, in the same manner as appeals from other actions.

(e) An election of the legislative body held under the ordinance or court judgment determining districts that is in effect on the date of the election is valid, regardless of whether the ordinance or judgment is later determined to be invalid.

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SECTION 3. IC 36-4-4-5 IS AMENDED TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) If uncertainty exists or a  
 dispute arises concerning the executive or legislative nature of a power  
 or duty exercised or proposed to be exercised by a branch, officer,  
 department, or agency of the government of a municipality, a petition  
 may be filed in the circuit court of the county in which the municipality  
 is located by the municipal executive, another municipal elected  
 official, the president of the municipal legislative body, or any person  
 who alleges and establishes to the satisfaction of the court that ~~he~~ **the**  
**person** is or would be adversely affected by the exercise of the power;  
 however, in a county ~~having~~ **that does not contain a consolidated city**  
**and that has** a superior court ~~that has~~ **with** three (3) or more judges,  
 the petition shall be filed in the superior court and shall be heard and  
 determined by the court sitting en banc.

(b) **In a county containing a consolidated city, the petition shall  
 be heard and determined by a five (5) member panel of judges  
 from the superior court. The clerk of the court shall select the  
 judges electronically and randomly. Not more than three (3)  
 members of the five (5) member panel of judges may be of the same  
 political party. The first judge selected shall maintain the case file  
 and preside over the proceedings.**

(c) The petition must set forth the action taken or the power  
 proposed to be exercised, and all facts and circumstances relevant to a  
 determination of the nature of the power, and must request that the  
 court hear the matter and determine which branch, officer, department,  
 or agency of the municipality, if any, is authorized to exercise the  
 power. On the filing of the petition, the clerk of the court shall issue  
 notice to the municipal executive, each municipal elected official, and  
 the president of the municipal legislative body, unless the petition was  
 filed by that person, and to the municipal attorney, department of law,  
 or legal division.

~~(c)~~ (d) The court shall determine the matters set forth in the petition  
 and shall affix the responsibility for the exercise of the power or the  
 performance of the duty, unless it determines that the power or duty  
 does not exist. Costs of the proceeding shall be paid by the  
 municipality, except that if an appeal is taken from the decision of the  
 court by any party to the proceeding other than the municipal  
 executive, another municipal elected official, or the president of the  
 municipal legislative body, the costs of the appeal shall be paid by the  
 unsuccessful party on appeal or in the manner directed by the court  
 deciding the appeal.

SECTION 4. IC 36-7-15.1-11 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person who  
 2 filed a written remonstrance with the commission under section 10 of  
 3 this chapter and is aggrieved by the final action taken may, within ten  
 4 (10) days after that final action, file with the presiding judge of the  
 5 superior court a copy of the order of the commission and ~~his~~ **the**  
 6 **person's** remonstrance against that order, together with ~~his~~ **the**  
 7 **person's** bond, as provided by IC 34-13-5-7, in the event the appeal is  
 8 determined against ~~him~~ **the person**. The burden of proof is on the  
 9 remonstrator, and no change of venue may be granted.

10 (b) An appeal under this section shall be promptly heard by the  
 11 court without a jury. **Except in a county containing a consolidated**  
 12 **city,** all the judges of the court, or a majority of the judges if not all are  
 13 available, shall hear the appeal. **In a county containing a**  
 14 **consolidated city, the appeal shall be heard by one (1) judge unless**  
 15 **rules adopted by the court or by the Indiana supreme court require**  
 16 **an appeal to be heard by additional judges.** All remonstrances upon  
 17 which an appeal has been taken shall be consolidated and heard and  
 18 determined within thirty (30) days after the time of the filing of the  
 19 appeal. The court shall decide the appeal based on the record and  
 20 evidence before the commission, not by trial de novo. It may ~~by a vote~~  
 21 ~~of at least a majority of all the elected judges~~ confirm the final action  
 22 of the commission or sustain the remonstrances. **If the appeal is**  
 23 **decided in a county that does not contain a consolidated city, the**  
 24 **vote of at least a majority of all the elected judges is required to**  
 25 **confirm the final action of the commission or sustain the**  
 26 **remonstrances.** The judgment of the court is final and conclusive,  
 27 unless an appeal is taken as in other civil actions. An appeal to the  
 28 court of appeals or supreme court has priority over all other civil  
 29 appeals.

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## SENATE MOTION

Madam President: I move that Senator Lubbers be added as coauthor of Senate Bill 346.

BRAY

## SENATE MOTION

Madam President: I move that Senator Breaux be added as coauthor of Senate Bill 346.

BRAY

## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 346, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 346 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 346, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 2, strike "Appeal by".

Page 1, line 3, strike "Applicant for Wholesalers' Permit".

Page 1, line 5, strike "IC 1971,".

Page 1, line 6, strike "7.1-3-23-30," and insert "**IC 7.1-3-23-30**,".

Page 2, line 27, after "matter." insert "**The court shall hear and determine the matter as a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of**

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the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings."

Page 3, line 9, after "(b)" insert **"In a county containing a consolidated city, the petition shall be heard and determined by a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings.**

**(c)".**

Page 3, line 19, strike "(c)" and insert **"(d)".**

and when so amended that said bill do pass.

(Reference is to SB 346 as printed January 26, 2007.)

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

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